

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ROBERT H. NESBITT, JR.,

Plaintiff,

No. CIV S-03-2243 MCE DAD P

vs.

NEIL WAKABAYASHI, et al.,

Defendants.

ORDER AND

FINDINGS & RECOMMENDATIONS

By order filed March 21, 2005, plaintiff was required to file and serve his pretrial statement on or before September 30, 2005. Pretrial conference was set for October 21, 2005, and jury trial was set for January 18, 2006. Due to plaintiff's failure to file a timely pretrial statement, the undersigned vacated the pretrial conference and ordered plaintiff to show cause for his failure to comply with the scheduling order. After plaintiff filed a pretrial statement that was both untimely and deficient, the undersigned vacating the trial date and reset pretrial conference for March 24, 2006. By the November 15, 2005 order, plaintiff was required to file and serve an amended pretrial statement and motions to obtain attendance of witnesses at trial on or before March 3, 2006. Plaintiff has not responded in any manner to the November 15, 2005 order.

In permitting plaintiff to proceed with this action, the undersigned cautioned plaintiff that "failure to calculate deadlines correctly and comply with them may have serious

1 consequences.” (Order filed Nov. 15, 2005, at 3.) The undersigned previously declined to  
2 recommend dismissal of this action, although defendants requested such a sanction for plaintiff’s  
3 failure to file a timely pretrial statement. (Id.) Dismissal is appropriate at this time in light of  
4 plaintiff’s second failure to file a timely pretrial statement and his failure to prosecute this action.  
5 See Fed. R. Civ. P. 16(f); Fed. R. Civ. P. 41(b); Local Rule 11-110.

6 In accordance with the above, IT IS HEREBY ORDERED that:

- 7 1. Defendants are relieved from filing a pretrial statement.  
8 2. The pretrial conference set for March 24, 2006 is vacated; and

9 IT IS HEREBY RECOMMENDED that this action be dismissed with prejudice.

10 These findings and recommendations are submitted to the United States District  
11 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fifteen  
12 days after being served with these findings and recommendations, any party may file written  
13 objections with the court and serve a copy on all parties. Such a document should be titled  
14 “Objections to Magistrate Judge’s Findings and Recommendations.” Any reply to objections  
15 shall be served and filed within ten days after service of the objections. The parties are advised  
16 that failure to file objections within the specified time may waive the right to appeal the District  
17 Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

18 DATED: March 14, 2006.

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DALE A. DROZD  
UNITED STATES MAGISTRATE JUDGE

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